



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 21, 2004

Tyler T. Felton
Mary Lou Felton
P.O. Box 779
Ketchum, ID 83340

Re: Correspondence dated June 10, 2004

Dear Mr. and Ms. Felton:

The Idaho Department of Water Resources (IDWR) has received your letter dated June 10, 2004 regarding mitigation for ground water use in Water District 34. In your letter, you stated that you "...have no interest in further subsidizing any Junior water rights... I should be a beneficiary of any mitigation and not a payer..."

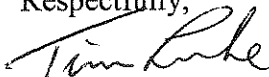
You are not being required to provide mitigation to junior water rights. You are required to provide mitigation to senior surface water rights in order to be allowed to continue to divert your junior ground water rights out-of-priority. The amount of mitigation that you are required to provide is based on the amount of ground water that you divert. Your share of the mitigation burden will be proportionately smaller than another user who diverts more ground water than you do.

Conjunctive administration of ground water and surface water in Water District 34 was established by rule IDAPA 37.03.12.050.01 in 1994. A copy of this rule was sent to you along with the mitigation notice dated May 13, 2004. The rule provides that water users with water rights whose source is the Big Lost River with their point of diversion downstream from Mackay Dam may request mitigation for water rights with 1905 and earlier priority dates. Because some of your surface water rights meet these criteria, you have had the opportunity to request mitigation from junior ground water users for the past ten years. Requests for mitigation must be made to the watermaster at the beginning of the season, when you make your initial request for delivery of your water right. If you would like junior ground water users to provide mitigation for your senior surface water rights in future years, you should make a request to the watermaster as described by the rule. Because you use both surface water and ground water, you may be both a beneficiary and a provider of mitigation, if you request mitigation in future years.

Because you do not have an acceptable alternative mitigation plan, you will be subject to any assessments made by Water District 34 to cover the costs of mitigation, assuming that Water District 34

submits an acceptable plan to IDWR. You will only be subject to assessment if you are using ground water during the 2004 irrigation season. You have the option of reducing your assessment by reducing or ceasing your diversion of ground water during the remainder of the 2004 irrigation season.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke", written in a cursive style.

Tim Luke

Water Distribution Section

cc: Robert Duke, Watermaster, Water District 34
Seth Beal, Advisory Board Chairman, Water District 34
Karl Dreher, Director, IDWR
IDWR Eastern Region

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